

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PROGRESSIVE NORTHWESTERN INSURANCE a/s/o **Horton Brothers of Delaware Inc. & Jackie L. Lucas, Jr**
 (b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Roger D. Landon (302) 472-8100
 101 Centre Rd. Ste 210
 Wilmington DE 19805

DEFENDANTS

RONALD F. ANNONE, NATIONAL RAILROAD PASSENGER CORPORATION A/K/A AMTRAK, & NORFOLK SOUTHERN CORPORATION
 County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Jessica E. Gensler Lippy (302) 798-2779
 501 Silverado Rd. Ste 94
 Wilmington DE 19809

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1441 28 U.S.C. 1331

VI. CAUSE OF ACTION

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

1807.32 CHECK YES only if demanded in complaint:
 JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/19/05

SIGNATURE OF ATTORNEY OF RECORD

Jessica E. Gensler Lippy

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

With Auto vs. Train Collision

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PROGRESSIVE NORTHWESTERN
INSURANCE, A/S/O HORTON
BROTHERS OF DELAWARE, INC AND
JACKIE L. LUCAS, JR.

Plaintiffs

vs.

NATIONAL RAILROAD PASSENGER
CORPORATION A/K/A AMTRAK,
RONALD F. ANNONE, AND NORFOLK
SOUTHERN CORPORATION

Defendants

CIVIL ACTION

NO.

JURY TRIAL DEMANDED
12 JURORS REQUESTED

NOTICE OF REMOVAL

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE:**

The Petitioner, Defendant, National Railroad Passenger Corporation (hereinafter "Amtrak"), by and through its attorneys, Gallagher, Rowan & Egbert, P.C., respectfully avers the following:

1. On September 28, 2005, this action was commenced against the Defendants in the Court of Common Pleas in the County of New Castle, Delaware, upon the filing of a Praecipe for Summons and Complaint. This case is known as **Progressive Northwestern Insurance, a/s/o Horton Brothers of Delaware, Inc and Jackie L. Lucas, Jr. Vs. National Railroad Passenger Corporation A/k/a Amtrak, Ronald F. Annone, and Norfolk Southern Corporation**, C.A. No. 2005-

09-462 The Complaint is attached hereto and made part hereof. Exhibit A.

Amtrak received service from the Plaintiff's Company about October 2000.

Defendant Amtrak is a corporation created by Act of Congress codified at 49 U.S.C. 2430. See

4. The Federal Government owns a controlling interest in Amtrak. The Federal Government owns more than one-half of the capital stock of the Defendant Amtrak.

The above-described act is Civil Action No. 05-1000, which this Honorable Court has federal question jurisdiction under 28 U.S.C. 1331. That Defendant Amtrak was created by Act of Congress and the United States owns more than one-half of its capital stock. Eichelberg v. National Railroad Passenger Corp., 7 F.3d 701, 11 Fed Cl 995; Foster v. National Fire, Marine & Inland Ins. Co., 86 F.3d 401, 11 Fed Cl 93; Capocy v. Kirtadze, et al., 1997 V.L. 1296 (N.D. 1997); Gibson v. National R. R. Corp., 7 F.R.D. 408 (I.D.P. 197); Landman v. Borough of Bristol, 896 F.2d 406, 47-408, I.D.P. 995; Wormley v. Southern Pacific Transp. Co., 86 F.Supp. 82, D.T. 994; Estate of Wright v. Illinois Cent. R. Co., 83 F.2d 74, D.M. 993; Boone v. National Railroad Passenger Corp., 99 W.L. 93946, D.P. 1993; Ritter v. Consolidated Rail Corporation, 1993 V.L. 111, D.P. 99; Marcus v. Northeast Commuter Services Corp., 1992 V.L. 967, D.P. 992; McManus v. Glassman's Wynnefield, Inc., 70 F.3d 104, D.P. 89; In re: Rail Collision Near Chase, Maryland, on January 4, 1987; Harvey v. National Railroad

Passenger Corporation, et al., 680 F.Supp. 728 (D.Ct. Md. 1987); See also, Nero v. Amtrak, 714 F.Supp. 753, 754 (E.D. Pa. 1989); Rivera v. City of Bethlehem, E.D. Pa. No. 92-3292, Memorandum Opinion and Order, July 20, 1992; Zawacki v. Penpac, Inc., 745 F.Supp. 1044 (M.D. Pa. 1990).

6. The above-described action is one which may be removed to this Honorable Court by Amtrak pursuant to the provisions of 28 U.S.C. §1441 et seq in that this action has been brought in a state court, and a District Court of the United States has original jurisdiction under 28 U.S.C. §1331

7. This Notice is filed with this Court within the time for removal set forth in 28 U.S.C. §1446(b), and as set forth in Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 119 S.Ct. 1322 (1999), inasmuch as the thirty (30) day period for removal, which runs from Amtrak's receipt of the Complaint, has not expired

8. Defendant, National Railroad Passenger Corporation a/k/a Amtrak owns, possesses, controls, maintains and/or is responsible for the train involved in the accident as alleged in plaintiff's complaint.

9. Plaintiff Insurance Company as subrogee of Horton Brothers suffered monetary damages when the Horton Brothers vehicle collided with the Amtrak train in or around Newark, Delaware on October 13, 2003.

10. Written notice of the filing of this Notice will be given to the adverse parties as required by 28 U.S.C. §1446(d).

11. A true and correct copy of the Notice will be filed with the Prothonotary of the Court of Common Pleas of New Castle County, Delaware, as provided by 28

U.S.C. §1446(d).

12. Pursuant to U.S.C. §1446(a), there is found herewith and by reference made a part hereof a true and correct copy of all process, pleadings and orders served upon the noticing party in this action.

WHEREFORE, Defendant, Amtrak, hereby prays that it may affect the removal of this action from the Court of Common Pleas, County of New Castle, Delaware to the United States District Court for the District of Delaware.

GALLAGHER, ROWAN & EGBERT P.C.

BY: 

JESSICA E. GENSLER LIPPY, ESQUIRE

Attorney I.D. No. 4426

Silverside Carr Executive Center

501 Silverside Road, Suite 94

Wilmington, DE 19809

(302) 798-2779

Attorney for Defendants

National Railroad Passenger Corporation a/k/a

Amtrak, Ronald F. Annone, and Norfolk

Southern Corporation

Date: 10/19/05

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANITA SMITH, et al

CIVIL ACTION

Plaintiffs

v.

NO.

AMTRAK and NATIONAL RAILROAD
PASSENGER CORPORATION

Defendants


JURY TRIAL DEMANDED
12 JURORS REQUESTED

CERTIFICATE OF SERVICE

I, Jessica E. Gensler Lippy, Esquire, attorney for National Railroad Passenger Corporation a/k/a Amtrak, Ronald F. Annone, and Norfolk Southern Corporation, hereby certify that a true and correct copy of the Notice of Removal, was served via first class mail, postage prepaid to:

Roger D. Landon
1011 Centre Road
Suite 210
Wilmington, DE 19805

GALLAGHER, ROWAN & EGBERT P.C.

BY: 
JESSICA E. GENSLER LIPPY, ESQUIRE
Attorney I.D. No. 4426
SILVERSIDE CARR EXECUTIVE CENTER
501 SILVERSIDE ROAD, SUITE 94
WILMINGTON, DE 19809
(302) 798-2779
Attorney for Defendants
National Railroad Passenger Corporation a/k/a
Amtrak, Ronald F. Annone, and Norfolk
Southern Corporation

Date: _____

10/19/05

GALLAGHER, ROWAN & EGBERT, P.C.

By: Jessica E. Gensler Lippy, Esquire

Attorney I.D. No. 4426

Silverside Carr Executive Center

501 Silverside Road, Suite 94

Wilmington, DE 19809

(302) 798-2779

File No. 105.014

Attorney for Defendants, National
Railroad Passenger Corporation
a/k/a Amtrak, Ronald F. Annone,
and Norfolk Southern Corporation

PROGRESSIVE NORTHWESTERN
INSURANCE, A/S/O HORTON
BROTHERS OF DELAWARE, INC AND
JACKIE L. LUCAS, JR.

Plaintiffs

vs.

NATIONAL RAILROAD PASSENGER
CORPORATION A/K/A AMTRAK,
RONALD F. ANNONE, AND NORFOLK
SOUTHERN CORPORATION

Defendants

COURT OF COMMON PLEAS
STATE OF DELAWARE
NEW CASTLE COUNTY

C.A. No. 2005-09-462
Arbitration Case

PRAECIPE TO FILE NOTICE OF REMOVAL

**TO THE PROTHONOTARY OF THE COURT OF COMMON PLEAS
OF DELAWARE IN AND FOR NEW CASTLE COUNTY:**

Kindly file the within certified copy of the Notice of Removal filed earlier with
the Clerk of the United States District Court for the District of Delaware.

BY:


JESSICA E. GENSLER LIPPY, ESQUIRE

Attorney for Defendants

National Railroad Passenger Corporation a/k/a
Amtrak, Ronald F. Annone, and Norfolk
Southern Corporation

Date:

**CIVIL CASE INFORMATION STATEMENT (CIS)
COURT OF COMMON PLEAS**

2005 - 09 - 462

COUNTY: (N) K S

CIVIL ACTION NUMBER: _____

Civil Case Type: ARIZC
(SEE REVERSE SIDE FOR TYPE)

Option:

Progressive Northwestern
Ins also Horton Bros.
of DE, Inc + Jackiel
Lucas Jr.

v.

Ronald F. Annonc
et al.

ATTORNEY NAME(S):

ATTORNEY ID(S):

Roger D. Landon, Esquire (ID No. 2460)

FIRM NAME: **Murphy Spadaro & Landon**
1011 Centre Road, Suite 210
Wilmington, DE 19805

ADDRESS: **Telephone: (302) 472-8112**
Facsimile: (302) 225-3673
E-mail: RLandon@mslaw.com

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

Name and Status of Party filing document:

Plaintiff

DOCUMENT TYPE: (E.G.: COMPLAINT; ANSWER WITH COUNTERCLAIM)

Complaint

Non-Arbitration _____

(CERTIFICATE OF VALUE MAY BE REQUIRED)

Arbitration ☒ Mediation _____ Neutral Assessment _____

Defendant (Circle One) **ACCEPT** **REJECT**

JURY DEMAND YES _____ NO _____

If Yes - please attach \$175.00 filing fee for Prothonotary.

IDENTIFY ANY RELATED CASES NOW PENDING
BY CAPTION AND CIVIL ACTION NUMBER:

EXPLAIN THE RELATIONSHIP(S):

OTHER UNUSUAL ISSUES THAT AFFECT CASE MANAGEMENT:

Marvin D. Smith

OCT 07 2005

Director-Litigation

(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH PAGE)

THE CLERK WILL NOT PROCESS THE COMPLAINT, ANSWER, OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICE UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND HAVE THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRICKEN.

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PROGRESSIVE NORTHWESTERN INSURANCE
a/s/o Horton Brothers of Delaware, Inc.
and Jackie L. Lucas, Jr.,

Plaintiff,

v.

RONALD F. ANNONE, NATIONAL RAILROAD
PASSENGER CORPORATION A/K/A AMTRAK,
and NORFOLK SOUTHERN CORPORATION,

Defendants.

2005 - 09 - 462

C.A. No.

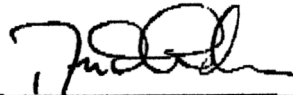
Arbitration Case

PRAECIPE FOR SUMMONS
(New Castle County)

TO THE CLERK OF THE COURT:

PLEASE ISSUE WRIT commanding Special Process Server Michael T. O'Rourke of O'Rourke Investigative Associates, Inc. to summon defendant Ronald F. Annone by serving Summons and Complaint upon him at 3 Brookside Place, Wilmington, Delaware 19809 (302.798.1359).

MURPHY SPADARO & LONDON



ROGER D. LANDON
1011 Centre Road, Suite 210
Wilmington, DE 19805
302.472.8100
Attorney for Plaintiff

SEP 23 4 08 PM '05
COURT OF COMMON PLEAS
NEW CASTLE COUNTY, DE

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PROGRESSIVE NORTHWESTERN INSURANCE |
a/s/o Horton Brothers of Delaware, Inc.
and Jackie L. Lucas, Jr., |

Plaintiff,

v.

RONALD F. ANNONE, NATIONAL RAILROAD
PASSENGER CORPORATION A/K/A AMTRAK,
and NORFOLK SOUTHERN CORPORATION, |

Defendants.

C.A. No. **2005 - 09 - 462**

Arbitration Case

TO S.P.S. MICHAEL T. O'ROURKE, O'ROURKE INVESTIGATIVE ASSOCIATES:

YOU ARE COMMANDED:

To summon defendant Ronald F. Annone by serving Summons and Complaint upon him at 3 Brookside Place, Wilmington, Delaware 19809 (302.798.1359)

TO THE ABOVE NAMED DEFENDANT(S):

Within twenty (20) days after you receive this Summons, excluding the day you receive it, you must file an Answer to the attached Complaint if you want to deny the allegations. The original of your Answer must be filed with the Clerk's Office of the Court of Common Pleas, Court House, 500 King Street, Wilmington, DE 19801 and must include proof that a copy of the Answer was served on the plaintiff's attorney who is named on the bottom of this Summons and the Complaint.

Failure to file an Answer denying the allegations will result in a judgment against you and action may be taken by the plaintiff or his attorney to satisfy the judgment.

DATED:

Clerk

Plaintiff's attorney
Roger D. Landon, Esquire
Murphy Spadaro & Landon
1011 Centre Road, Suite 210
Wilmington, DE 19805
302.472.8100

SEP 26 4 06 PM '05
COURT OF COMMON PLEAS
NEW CASTLE CO. DE.

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PROGRESSIVE NORTHWESTERN INSURANCE |
a/s/o Horton Brothers of Delaware, Inc. |
and Jackie L. Lucas, Jr., |

Plaintiff,

C.A. No.

v.

Arbitration Case

RONALD F. ANNONE, NATIONAL RAILROAD
PASSENGER CORPORATION A/K/A AMTRAK,
and NORFOLK SOUTHERN CORPORATION,

Defendants.

COMPLAINT

1 Progressive's right of subrogation in this matter arises from a contract of automobile insurance between it and Horton Brothers of Delaware, Inc. (hereinafter "Horton Brothers").

2. Upon information and belief, defendant Ronald F. Annone is a competent adult resident of the State of Delaware.

3. Defendant National Railroad Passenger Corporation (hereinafter "Amtrak") is a passenger railroad owning the registered service mark "Amtrak", with headquarters at 60 Massachusetts Avenue, NE, Washington, DC 2002 and operating a principal place of business at 1400 Vandever Avenue, Wilmington, Delaware.

4. Defendant Norfolk Southern Corporation (hereinafter "Norfolk Southern") is a corporation of the State of Virginia that owns and operates freight railways and tracks in many states, including the State of Delaware, with headquarters at Three Commercial Plaza, Norfolk, Virginia 23510-2191.

5. On October 13, 2003 Jackie L. Lucas, Jr. was operating Horton Brothers' 2000

International truck westbound on Old Baltimore Pike (County Road 26) near the City of Newark, Delaware.

6. At the same time, defendant Annone was operating a 1966 EMD GP40 Amtrak engine, towing a train of passenger railcars, southbound on Norfolk Southern's Track No. FK2.89 approaching the rail crossing with Old Baltimore Pike.

7. Mr. Lucas stopped at the rail crossing, and neither seeing nor hearing any type of signal or warning from either the train or the overhead warning lights or bells that the train was approaching, began proceeding across.

8. The train proceeded across the rail crossing just ahead of the path of travel of the truck operated by Mr. Lucas.

9. Mr. Lucas was unable to stop the truck in time to avoid colliding with the left side of the train.

10. As a result of the collision, Mr. Lucas was injured and Horton Brothers' truck was destroyed.

11. The collision and all damage therefrom was proximately caused by the negligence of defendant Annone, specifically that he:

- a) failed to maintain a proper, constant visual lookout;
- b) failed to maintain the train under proper control;
- c) failed to yield the right-of-way;
- d) operated the train a careless and/or imprudent manner;
- e) operated the train in a reckless manner;
- f) operated the train in an inattentive manner;
- g) operated the train at a speed greater than was prudent under the conditions

then-existing;

- h) failed to give proper audible warning when approaching the public highway crossing, in violation of 17 DEL.C. § 701(a);
- i) operated the train at speeds exceeding those permitted by law, including 49 CFR § 231.9; and,
- j) was otherwise negligent *per se* and/or in common law as may be learned through further investigation and discovery.

12. Amtrak is vicariously liable to Plaintiff for any damages proximately caused by the negligence of defendant Annone, pursuant to the doctrine of *respondeat superior*.

13. The collision and all damage therefrom was proximately caused by the negligence of defendant Norfolk Southern, whose employees and/or non-employee agents knew, or through the exercise of due care should have know, that the overhead warning lights and warning bells were malfunctioning or were otherwise inadequate to warn approaching automobile traffic of the train's approach.

14. As a result of the defendants' negligence, Progressive became legally obligated to provide Property Damage benefits to Horton Brothers totaling \$26,807.32 and Personal Injury Protection benefits to Mr. Lucas totaling \$15,000.

WHEREFORE, plaintiff Progressive Northwestern Insurance Company prays judgment be entered in its favor and against defendants Ronald F. Annone, National Railroad Passenger Corporation a/k/a Amtrak, and Norfolk Southern Corporation, jointly and severally, in the amount of \$41,807.32 plus pre-judgment and post-judgment interest at the legal rate and all costs.

MURPHY SPADARO & LANDON

A handwritten signature in black ink, appearing to read "R. Landon", written over a horizontal line.

ROGER D. LANDON

1011 Centre Road, Suite 210

Wilmington, DE 19805

302.472.8100

Attorney for Plaintiff